

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )

Petitions for Forbearance from )  
Application of Section 272 of the )  
Communications Act of 1934, )  
as Amended, to Previously )  
Authorized Services )

CC Docket No. 96-149

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COMMENTS OF AT&T CORP.

Pursuant to the Public Notice issued July 3, 1997, AT&T hereby submits its Comments on the supplemental showings by Ameritech,<sup>1</sup> Bell Atlantic,<sup>2</sup> BellSouth,<sup>3</sup> NYNEX<sup>4</sup> and U S West<sup>5</sup> (collectively, "RBOCs") in connection with their pending petitions for forbearance under Section 10 of the Communications Act of 1934, as amended,<sup>6</sup> from the application of the

<sup>1</sup> Letter from Michael S. Pabian, Counsel, Ameritech, to William F. Caton, Acting Secretary, Federal Communications Commission, June 30, 1997. All citations to RBOC's pleadings in these comments are to the supplemental showings that are the subject of the Commission's Public Notice, unless otherwise indicated.

<sup>2</sup> Letter from Edward Shakin, Regulatory Counsel, Bell Atlantic, to William F. Caton, Acting Secretary, Federal Communications Commission, June 30, 1997.

<sup>3</sup> Letter from David G. Frolio, General Attorney, BellSouth, to William F. Caton, Acting Secretary, Federal Communications Commission, June 30, 1997.

<sup>4</sup> Letter from Campbell L. Ayling, Counsel, NYNEX, to William F. Caton, Acting Secretary, Federal Communications Commission, June 30, 1997.

<sup>5</sup> U S West, Supplemental Petition for Forbearance, U S West Communications, Inc. Petition for Forbearance from Application of Section 272 of the Communications Act of 1934, as Amended, to Previously Authorized Services, filed June 30, 1997.

<sup>6</sup> Section 10(a) of the Act provides that the Commission shall forbear from application of any provision of the Act "if the Commission determines that -

(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;

requirements of Section 272 of the Act to certain of their E911 services, Telecommunications Relay Services ("TRS"), and Reverse Directory Assistance services ("RDA").

AT&T strongly supports the Commission's decision to require the RBOCs to submit supplemental showings in support of their petitions. Congress plainly did not intend that such relief be casually invoked, and in Section 10 of the 1996 Act defined specific criteria that must be satisfied in order to justify forbearance. The Commission correctly determined that the RBOCs' initial requests did not measure up to this statutory standard.

As AT&T has stated in its comments on the pending petitions, in light of the unique nature of the services at issue, upon a proper showing by a petitioning RBOC, AT&T would not oppose an appropriate, narrow application of the Commission's forbearance authority. However, although the RBOCs' supplements are of substantial length, in many instances they once again fail even to address the statutory criteria for forbearance. In particular, most of the supplements do not discuss the "the extent to which such forbearance will enhance competition among providers of telecommunications services," as required by § 10(b). Instead, the supplemental filings merely seek -- at most -- to rely on findings by the District Court and Department of Justice ("DOJ") under the MFJ, or on other rulings that predate the 1996 Act's mandate for full and fair local exchange competition. As AT&T showed in its comments on the RBOCs' initial petitions, reliance on MFJ-era waivers is insufficient to demonstrate that a forbearance request meets the specific criteria for forbearance under Section 10, because those

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(footnote continued from previous page)

(2) enforcement of such regulation or provision is not necessary for the protection of consumers; and

(3) forbearance from applying such provision or regulation is consistent with the public interest."

earlier rulings turned on significantly different and narrower circumstances than those required under the 1996 Act. In granting waivers under the MFJ, the District Court and the DOJ did not address the implications of integration of E911, TRS or RDA services for potential RBOC competitors in the local exchange market. In order to grant the pending petitions, the Commission must weigh the potential impacts of the RBOCs' forbearance requests on nascent local competition. The petitioners have yet to shoulder -- much less to carry -- their substantial burden under this statutory test.

As AT&T has also stated, if the Commission ultimately grants any of the petitions, it is crucial that its order make clear that it is not deregulating the services at issue, and that it is not relieving the RBOCs from compliance with the nondiscrimination and other requirements of the 1996 Act or any other legal requirement.<sup>7</sup> In addition, forbearance concerning these services explicitly should provide no precedent with regard to other RBOC services.

E911 Services. All of the petitioning RBOCs seek forbearance from the structural separation requirements of § 272 for certain E911 services. AT&T agrees that E911 is a vital service, and would not oppose forbearance in the event an RBOC demonstrates that its provision of these services on an integrated basis meets the § 10 criteria. However, the supplements do not appear to satisfy the statutory requirements.

As a preliminary matter, the petitioners assert that providing E911 via a separate subsidiary would greatly increase the costs of that service, but none attempts to quantify this

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<sup>7</sup> For example, the RBOC should continue to be subject to the accounting and nondiscrimination safeguards required under the Commission's Computer Inquiry rulings, including the Commission's joint cost rules, 47 C.F.R. §64.901, appropriate amendments to its cost allocation manual, see 47 C.F.R. §64.903(b), and compliance with the Computer III customer proprietary network information requirements, as amended by Section 222.

alleged effect or documents its assertions.<sup>8</sup> Compliance with § 272 will inevitably cause an RBOC to incur some expense, but nothing in that section or in § 10 makes the separate subsidiary requirement contingent on its cost. NYNEX asserts that Congress intended to impose the costs of § 272 compliance only when a BOC enters "new lines of business,"<sup>9</sup> but this claim cannot be credited. Section 272(h) allows BOCs one year from enactment of the 1996 Act to comply with § 272 for activities in which they are "already engaged." Thus, § 272 on its face addresses not only RBOC entry into "new" markets, but preexisting activities as well.

As was the case in the RBOCs' initial petitions, their supplemental showings fail to address § 10's explicit mandate to consider the effects of forbearance on local competition. For example, Ameritech discusses the § 10 "public interest" requirement in a single paragraph that fails even to mention the competitive effects of E911 forbearance.<sup>10</sup> Similarly, U S West's supplement contains no discussion of the effect of the requested forbearance on emerging local competition except the completely unsupported statement that "forbearance will have no impact" on competition.<sup>11</sup> NYNEX relies solely on MFJ-era findings by the District Court and DOJ, and Commission proceedings that predate the 1996 Act, and nowhere addresses local competition.<sup>12</sup>

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<sup>8</sup> See Ameritech, p. 11; Bell Atlantic, pp. 2, 3; BellSouth, p. 19; U S West, pp. 9-10. In contrast to the other RBOCs, NYNEX does identify some reasons its costs purportedly would increase, but provides no support for its claims that these increases would be significant. NYNEX, pp. 6-7.

<sup>9</sup> NYNEX, pp. 7-8.

<sup>10</sup> See Ameritech, pp. 7-8.

<sup>11</sup> See U S West, p. 11 n.19.

<sup>12</sup> See NYNEX, p. 10.

Finally, U S West argues that the Commission should classify E911 as "adjunct to basic," rather than as an "information service" subject to § 272.<sup>13</sup> That RBOC also argues that the Commission must deem E911 "adjunct to basic" in order to regulate it as a § 271 "checklist" item "because [E911 services] are also enhanced services and thus not common carrier services, and the [Commission] does not regulate them under Title II."<sup>14</sup> U S West provides no basis for its claim that only basic services are subject to § 271, and its novel reading finds no support in that section or elsewhere in the 1996 Act. Under this analysis, for example, the Commission would have no authority to require a BOC's information services affiliate to comply with the requirements of § 272(b). Moreover, even if there were some grounds for U S West's interpretation (as there is not), the Commission has ample authority to regulate RBOCs' provision of enhanced services under its Title I jurisdiction.<sup>15</sup>

Nevertheless, the Commission need not determine whether E911 should be classified as an information service in order to decide the instant petitions. Upon a proper showing by an RBOC under § 10, the Commission could simply rule that it will forbear from

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<sup>13</sup> U S West's effort to reclassify E911 as "adjunct to basic" fails to account for the fact that the DOJ's support for integrated provision of E911 under the MFJ underscored that these services were "information services." See United States v. Western Electric, 1984 U.S. Dist. LEXIS 10566 (D.D.C. 1984) at \*7, n. 8 ("The Department of Justice argues strenuously, and the Court agrees, that the information storage and retrieval functions of E911 service are an 'information service' within the meaning of the decree, and that such functions may not be performed without a waiver.").

<sup>14</sup> See U S West, pp. 4- (citations omitted); 47 U.S.C. § 271(c)(2)(B)(vii)(1).

<sup>15</sup> See Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 77 FCC 2d 384, 432 (1980).

enforcing Section 272 as to that service, and could reserve judgment as to the status of E911 until such time as that question may be directly presented.<sup>16</sup>

Telecommunications Relay Service ("TRS"). Ameritech seeks forbearance from § 272's separate subsidiary requirements for its TRS services. Like its discussion of E911, Ameritech's supplement only cursorily addresses the § 10 criteria, and nowhere considers the effect of the requested forbearance on local competition. Thus, Ameritech's petition remains facially inadequate to satisfy the legal requirements for forbearance.

Ameritech also states that it is "likely" that forbearance is not necessary because § 225(a)(3) denominates TRS as a "telephone transmission service," rather than an "information service."<sup>17</sup> This is a distinction without a difference, however. The phrase "telephone transmission service" is not a term of art, and has no significance as to the status of TRS under § 272. Moreover, there is no evidence of any kind that Congress intended to amend the Commission's longstanding regulatory treatment of TRS in this respect.<sup>18</sup>

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<sup>16</sup> As AT&T has stated in its comments on the RBOCs' previous petitions, to the extent that their integrated provision of E911 services enables them exclusively to access unlisted numbers, as well as numbers available from other LECs that utilize their databases for directory assistance services, such exclusive access to that information discriminates against competitive providers, and precludes them from offering their own E911 services. So long as the RBOCs continue to offer 911 and E911 services to end users and other carriers, they may not deny competitive providers the ability themselves to offer such services by denying them essential unlisted and third-party-LEC number information. This is precisely what the Section 272 safeguards are intended to prevent.

<sup>17</sup> See Ameritech, pp. 2-3.

<sup>18</sup> Cf., e.g., County of Yakima v. Confederated Tribes and Bands of the Yakima Indian Nation, 502 U.S. 251, 262 (1992) ("it is a cardinal rule that repeals by implication are not favored ...") (internal quotation and ellipses omitted).

The District Court found it a "legally simple and straightforward" matter that TRS is an information service.<sup>19</sup> In fact, the court expressly rejected the very claim Ameritech implies here: that TRS is not an information service because the communications assistants that translate conversations from voice to TDD (and vice versa) do not alter the content of messages.<sup>20</sup> Further, the First Report and Order in the instant docket affirmed that the term "information services" is broader in scope than "enhanced services" as defined in the Commission's rules, and that telemessaging services provided by live operators that do not involve "computer processing applications" are information services within the meaning of the 1996 Act.<sup>21</sup>

Once again, the Commission need not decide whether TRS should be classified as an information service in order to decide the pending petition. As in the case of E911, upon a proper showing by an RBOC that its provision of TRS on an integrated basis meets the requirements of § 10, the Commission could simply rule that it will forbear from enforcing § 272, and could reserve judgment as to the status of TRS until such time as that question may be directly presented.<sup>22</sup>

Reverse Directory Assistance ("RDA"). BellSouth seeks forbearance from the § 272 separate affiliate requirements for its RDA services. AT&T would not oppose forbearance

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<sup>19</sup> United States v. Western Electric, 1989 U.S. Dist. LEXIS 18907 (Sept. 11, 1987), at p. \*2.

<sup>20</sup> Id., at p. \*3. See Ameritech, p. 2 (noting that communications assistants act as a "transparent conduit" between calling and called parties).

<sup>21</sup> See First Report and Order and Further Notice of Proposed Rulemaking, Implementation of Non-Accounting Safeguards of Sections 271 and 272 of the Telecommunications Act of 1934, as Amended, CC Docket No. 96-149, FCC 96-489, released December 24, 1996, at ¶ 103 ("Non-Accounting Safeguards Order").

<sup>22</sup> If the Commission were to rule that TRS is not an information service, that service would remain subject to the Commission's jurisdiction under Title I of the Communications Act.

pending a proper showing by BellSouth; however, that RBOC's supplement contains a number of erroneous claims that the Commission should explicitly reject.

First, in addressing the second prong of § 10, BellSouth contends that "As a set of provisions that addresses primarily the relationship between a BOC and its long-distance affiliate vis-à-vis nonaffiliates, Section 272 has little direct bearing on consumer protection."<sup>23</sup> Contrary to BellSouth's characterization, § 272 seeks to protect against the risk that the BOCs would use any market power they retain when they enter previously prohibited markets to engage in discrimination, cost misallocations, and price squeezes that harm both competition and consumers.<sup>24</sup> Similarly, BellSouth's assertion that it somehow would be unfair to require it to employ a separate affiliate to offer RDA when CLECs can offer that service on integrated basis<sup>25</sup> suggests a fundamental misapprehension of the purpose of § 272. That section seeks to prevent the RBOCs from, inter alia, leveraging their monopoly power into information services markets. The fact that CLECs are not required to comply with separate affiliate safeguards is simply irrelevant to the § 10 inquiry as to RDA or any other service.

BellSouth also suggests that its RDA services face direct competition from sources such as CD-ROM directories and Internet services.<sup>26</sup> These alternative services, however, generally are not as up-to-date as ILEC DA information. Moreover, many such services are compiled from ILEC data, and thus can compete with offerings such as BellSouth's only to the

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<sup>23</sup> BellSouth, p. 8.

<sup>24</sup> Non-Accounting Safeguards Order, ¶¶ 9-13.

<sup>25</sup> See BellSouth, p. 9.

<sup>26</sup> See id., pp. 8-9.



extent that RBOC is required to make available timely, accurate DA information. Accordingly, if the Commission finds some limited form of forbearance appropriate in order to allow BellSouth to provide RDA on an integrated basis, it should do so only upon the explicit requirement that BellSouth otherwise comply with the nondiscrimination and accounting requirements of § 272. In particular, BellSouth should not be permitted to use the forbearance process to seek to avoid making available DA information, including DA information that it obtains from other LECs for inclusion in its own RDA database, as such data would be subject to § 272(c)(1) if BellSouth were required to utilize a separate affiliate for RDA.

Finally, BellSouth argues that, although the District Court expressly deemed RDA to be an "information service" when it permitted BellSouth to offer that service on an integrated basis, that service should now be deemed "adjunct to basic" because that court also required BellSouth to offer RDA on a regulated basis.<sup>27</sup> Under this strange logic, BellSouth seems to claim that by virtue of explicitly determining that RDA was an information service and granting a waiver enabling its provision on an integrated basis, the court reclassified that service into its regulatory opposite. This claim simply cannot be credited.

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<sup>27</sup> See id., p. 6, n.14.

## CONCLUSION

For the reasons stated above and in its comments on the prior filings in this proceeding, if the petitioners demonstrate that their requests for forbearance comply with the criteria established in § 10 for such relief -- as they have not done in the instant supplemental filings -- AT&T would not oppose a properly circumscribed Commission decision narrowly to forbear from applying the separate affiliate requirements of § 272 to the services at issue.

Respectfully submitted,

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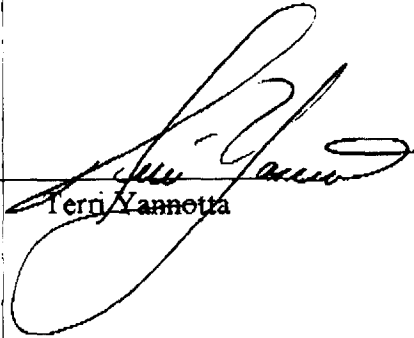
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July 22, 1997

**CERTIFICATE OF SERVICE**

I Terri Yannotta, do hereby certify that on this 22<sup>nd</sup> day of July, 1997 a copy of the foregoing "Comments of AT&T Corp." was mailed by U.S. first class mail, postage prepaid, to the parties listed on the attached service list.

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